

The Gazette of India

PUBLISHED BY AUTHORITY

No. 44] NEW DELHI, SATURDAY, NOVEMBER 3, 1951**NOTICE**

The undermentioned Gazettes of India Extraordinary were published during the week ending the 29th October 1951:—

Issue No.	No. & Date	Issued by	Subject
158	S. R. O. 1601, dated the 19th October 1951.	Ministry of Food & Agriculture.	Restriction on the transport of Bengal Gram by land, air or water from the districts of Hissar and Rohtak to any place outside those districts except the permit in writing issued by the Central Government.
159	S. R. O. 1631, dated the 20th October 1951.	Ministry of Commerce and Industry.	Authorising proprietors of newspapers to publish 12 extra pages per week from now till the end of January 1952 in connection with the forthcoming Elections.
160	S. R. O. 1632, dated the 24th October 1951.	Ministry of Law	Fixing certain dates for the elections to the House of the People within the Pangi and Chini Assembly Constituencies in the State of Himachal Pradesh.
161	S. R. O. 1633, dated the 25th October 1951.	Ministry of Commerce and Industry.	Further amendments in the Cotton Textiles (Control) Order, 1948.
162	S. R. O. 1634, dated the 26th October 1951.	Ministry of Law	To elect members in the Parliamentary Constituencies in the State of Punjab before the 15th February 1952.
	S. R. O. 1635, dated the 26th October 1951.	Ditto.	Fixing certain dates with respect to the elections to be held in the Parliamentary Constituencies in the State of Punjab.

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of this Gazette.

PART II—Section 3**Statutory Rules and Orders issued by the Ministries of the Government of India (other than the Ministry of Defence) and Central Authorities (other than the Chief Commissioners).****MINISTRY OF HOME AFFAIRS***New Delhi, the 24th October, 1951*

S.R.O. 1673.—In exercise of the powers conferred by Article 239(1) of the Constitution the President hereby entrusts to the Chief Commissioners of all Part C States, upto the 31st March, 1955, the functions of the Central Government under the provisions of the Indian Arms Act, 1878 (XI of 1878), and of the Indian Arms Rules, 1951, specified in the first column of the Schedule hereto annexed; whether in force of its own operation or as extended or applied with or without modifications to any local area subject to the general conditions hereinafter mentioned, namely:

- (1) that the Chief Commissioners shall, in the exercise of these functions, be subject to the like control by the Central Government as was exercisable by it immediately before the coming into force of this Notification.
- (2) that the Chief Commissioners shall observe the existing policy and instructions laid down by the Central Government and shall not initiate new policies or issue instructions inconsistent with those of the Central Government without that Government's consent, and subject to such conditions if any, as are specified in the second column of the Schedule against the corresponding entry in the first column thereof.

SCHEDULE

Provisions of Act and Rules	Conditions subject to which functions entrusted.
1	2
Sections 6, 7, 13, 15, 16(1), (2) and (4), 17(c), 25, 26, 30 and 32.	
Section 11.	The power to establish searching posts shall be exercised with the previous sanction of the Central Government.
Section 18.	This entrustment is limited to the territories under the administration of the Chief Commissioner and is without prejudice to the power of the Central Government to cancel or suspend licences throughout the whole or any portion of India.
Rules 2(1), 3(1) (b), 26(2), (3) and (4), 27, 29, 30 and 31(1).	
Rule 31(3).	The restriction which may be imposed by any general or special order by a Chief Commissioner under this rule shall be limited to the State of which he is Chief Commissioner.

Provisions of Act & Rules 1	Conditions subject to which func- tions entrusted 2
Rules 32(1) (b), 33, 34, 35, 37(1) (a) and (2) and 40(3) (a).	
Rule 44 (3).	<p>The entrustment under this rule is of the following power only, namely, by general or special order, to remit or reduce the fee payable in respect of grant or renewal of any licence—(a) for the import, transport or possession of sulphur in reasonable quantities proved to the satisfaction of the Chief Commissioner to be required in good faith for medicinal, agricultural, manufacturing or industrial purposes other than the manufacture of ammunition; or</p> <p>(b) granted under rule 10 to any person for the import of any arms, ammunition or military stores in reasonable quantities proved to the satisfaction of the authority granting the licence to be required in good faith for the protection of persons or property.</p>
Schedule I, entry 5.	
Schedule II, entries 1, 2, 4, 5 and 6.	
Schedule VII, entry 5.	
Schedule VIII—	
Forms IX and X—	
Conditions 2, 3, 7, 8 and 11 and condition 12.	
Forms XI and XII—	
Conditions 2, 3, 7 and 8	
Form XIII—	
Conditions 3 and 4.	
*Form XIV—	
Condition 3.	
form XV—	
Conditions 4 and 7.	
Form XVI—	
Conditions 3, 6 and 9.	
Form XVIIA—	
Conditions 3 and 9.	
*Form XVII—	
Condition 5.	

Provisions of Act and Rules 1	Conditions subject to which functions entrusted 2
Form XVIII— Conditions 6 and 7. Form XIX— Conditions 7 and 8.	

[No. 15/60/47-Police(I).]

S.R.O. 1674.—In exercise of the powers conferred by Article 258(1) of the Constitution and in supersession of the Notification of the Government of India in the late Home Department No. 21/50/37-Police, dated the 20th June, 1938, the President hereby entrusts to the Governments of Part A States for the period ending the 31st March, 1955, the functions of the Central Government under the provisions of the Indian Arms Act, 1878 (XI of 1878), and of the Indian Arms Rules, 1951, specified in the first column of the Schedule hereto annexed, whether in force of its own operation or as extended or applied with or without modifications to any local area subject to the general conditions hereinafter mentioned, namely:—

- (1) that the State Governments shall, in the exercise of these functions be subject to the like control by the Central Government as was exercisable by it before the coming into force of this Notification.
- (2) that the State Governments shall observe the existing policy and instructions laid down by the Central Government and shall not initiate new policies or issue instructions inconsistent with those of the Central Government without that Government's consent, and subject to such conditions, if any, as are specified in the second column of the Schedule against the corresponding entry in the first column thereof.

SCHEDULE

Provisions of Act and Rules 1	Conditions subject to which functions entrusted 2
Sections 6, 7, 13, 15, 16(1), (2) and (4), 17(c), 25, 26, 30 and 32.	
Section 11.	The power to establish searching posts shall be exercised with the previous sanction of the Central Government.
Section 18.	This entrustment is limited to the territories under the administration of the State Government and is without prejudice to the power of the Central Government to cancel or suspend licenses throughout the whole or any portion of India.
Rules 2(1), 3(1) (b), 26(2), (3) and (4), 27, 29, 30 and 31(1).	
Rule 31 (3).	The restriction which may be imposed by any general or special order of a State Government under this rule shall be limited to the State.

Provisions of Act and Rules	Conditions subject to which functions entrusted
1	2
Rules 32(1) (b), 33, 34, 35, 37(1) (a) and (2) and 40(3) (a).	
Rule 44(3).	The entrustment under this rule is of the following power only, namely, by general or special order, to remit or reduce the fee payable in respect of grant or renewal of any licence— (a) for the import, transport or possession of sulphur in reasonable quantities proved to the satisfaction of the State Government to be required in good faith for medical, agricultural, manufacturing or industrial purposes other than the manufacture of ammunition; or (b) granted under rule 10 to any person for the import of any arms, ammunition or military stores in reasonable quantities proved to the satisfaction of the authority granting the licence to be required in good faith for the protection of persons or property.
Schedule I, entry 5.	
Schedule II, entries 1, 2, 4, 5 and 6.	
Schedule VII, entry 5.	
Schedule VIII.	
Forms IX and X—	
Conditions 2, 3, 7, 8 and 11 and condition 12 in the case of West Bengal and Assam only.	
Forms XI and XII—	
Conditions 2, 3, 7 and 8	
Form XIII—	
Conditions 3 and 4.	
Form XIV—	
Condition 3.	
Form XV.	
Conditions 4 and 7.	
Form XVI	
Conditions 3, 6 and 9.	
Form XVIIA—	
Conditions 3 and 9.	
Form XVII—	
Condition 5.	
Form XVIII—	
Conditions 6 and 7.	
Form XIX—	
Conditions 7 and 8.	

MINISTRY OF EXTERNAL AFFAIRS

New Delhi, the 24th October 1951

S.R.O. 1675.—In exercise of the powers conferred by sub-sections (1) and (2) of section 15 of the Port Haj Committees Act, 1932 (XX of 1932), and in partial modification of the notification of the Government of Bombay in the Political and services Department No. P. 71, dated the 12th February, 1938, and in superse of the notification of the Government of India in the Ministry of External Affairs No. S.R.O. 601, dated the 7th September, 1950, the Central Government hereby authorises the Port Haj Committee, Bombay, to appoint its Executive Officer and such other officers and servants as the said Committee may deem to be necessary for the efficient discharge of its duties, subject to the following conditions, namely:—

- (1) the post is sanctioned by the Central Government; and
- (2) the previous approval of the Central Government is obtained to the appointment of—
 - (i) an Executive Officer for a period exceeding three months; and
 - (ii) a Superintendent-cum-Accountant for a period exceeding three months.

[No. 634-AWT/51.]

LEILAMANI NAIDU, Dy. Secy.

MINISTRY OF STATES

New Delhi, the 29th October 1951

S.R.O. 1676.—In pursuance of the provisions of clause (1) of Article 258 of the Constitution, the President, with the consent of the Government of Bombay, is pleased to entrust to that Government, in relation to the Estate of the Ruler of Aundh, the powers and functions conferred on the Central Government by Section 47 of the Bombay Court of Wards Act, 1905, (Bombay Act 1 of 1905).

[No. 250-PB.]

V. SHANKAR, Jt. Secy.

CENTRAL BOARD OF REVENUE**INCOME-TAX**

New Delhi, the 27th October 1951

S.R.O. 1677.—*Corrigendum.*—In the Central Board of Revenue notification No. 75—Income-tax, dated the 8th August 1951, sub-para. (d) shall be deleted.

[No. 117.]

S. P. LAHIRI, Secy.

CUSTOMS

New Delhi, the 29th October 1951

S.R.O. 1678.—In exercise of the powers conferred by section 9(c) of the Customs Act, 1878 (VIII of 1878), and in supersession of notification No. 49, dated the 2nd July 1927, the Central Board of Revenue is pleased to make the following Rules, viz.—

“The presentation of an export shipping bill for cancellation or amendment within the period of five clear working days prescribed in section 140 of the Sea Customs Act shall be deemed to be equivalent to giving the information required by that section, so far as regards the goods in respect of which such cancellation or amendment is applied for”.

[No. 74]

D. P. ANAND, Secy.

MINISTRY OF COMMERCE AND INDUSTRY

New Delhi, the 27th October 1951

S.R.O. 1679.—Corrigendum.—In the Government of India Ministry of Commerce and Industry Notification No. S.R.O. 1593, published at page 1226 of Part II, Section 3 of the *Gazette of India Extraordinary*, dated 16th October, 1951,

for the word and figure "Rs. 15/-" occurring in the Table below clause 11 of the Cotton Control Order, 1950, against C class licence read the word and figure "Rs. 25/-".

[File No. 44(25)-CT(A)/51.]

S. A. TECKCHANDANI, Under Secy.

MINISTRY OF HEALTH

New Delhi, the 26th October 1951

S.R.O. 1680.—Corrigendum.—In the notification of the Government of India in the Ministry of Health No. S.R.O. 721, dated the 1st May 1951, omit the words "and midwifery".

[No. F.2-7/51-MI.]

KRISHNA BIHARI, Asstt. Secy.

MINISTRY OF NATURAL RESOURCES AND SCIENTIFIC RESEARCH

New Delhi, the 26th October 1951

S.R.O. 1681.—In exercise of the powers conferred by section 5 of the Mines and Minerals (Regulation and Development) Act, 1948 (LIII of 1948), the Central Government hereby directs that the following amendments shall be made in the Mineral Concession Rules, 1949, namely:—

In the said Rules—

1. After Rule 48, the following rules shall be inserted, namely:—

"49. Every person obtaining a prospecting license or a mining lease from a private person, shall, within three months of the grant of such license or execution of such lease, submit to the State Government, in whose jurisdiction the area or areas covered by such concession is or are situated, a certified copy of the license or the lease.

50. Every transferee or assignee of a prospecting license or a mining lease, or of any right, title or interest therein, shall, within one month of such transfer or assignment, inform the State Government within whose jurisdiction the area or areas covered by such concession is or are situated, of the transfer or assignment and of the terms and conditions of such transfer or assignment."

2. The existing rules 49, 50 and 51 shall be re-numbered as 51, 52 and 53, respectively.

3. In rule 53, as re-numbered for the word and the figures "rule 49" the word and the figures "rule 51" shall be substituted, and after the words "or both" the words "and the license or lease so granted shall be void" shall be inserted.

4. After rule 53, as re-numbered, the following new rules shall be added:

"54. Should any licensee or lessee or his transferee or assignee fail to furnish the documents or information or returns as prescribed in rules 49 or 50 or in clause (viii) of sub-rule (1) of rule 41 or refuse entry or inspection by an officer authorised by the Central Government or the State Government under clause (viii), (ix) or (xi) of sub-rule (1) of rule 41, he shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to Rs. 500 or with both.

55. No court shall take cognizance of any offence punishable under these Rules, unless upon complaint made in writing by an officer empowered by the State Government in this behalf, within six months of the date on which the said offence is alleged to have been committed

56. No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under these Rules."

5. The existing rules 52, 53, 54, 55, 56, 57, 58, 59 and 60 shall be renumbered as 57, 58, 59, 60, 61, 62, 63, 64 and 65, respectively.

6. In rule 58, as renumbered for the word and the figures "rule 52" the word and the figures "rule 57" shall be substituted.

7. In rule 60, as renumbered, for the word and the figures "rule 54" the word and the figures "rule 59" shall be substituted.

[No. M.II-159(11).]

T. GONSALVES, Dy. Secy.

MINISTRY OF TRANSPORT

MERCHANT SHIPPING

New Delhi, the 27th October 1951

S.R.O. 1682.—In pursuance of rule 42 of the Indian Merchant Shipping (Life-Saving Appliances) Rules, 1934, the Central Government hereby directs that the following further amendment shall be made in the rules relating to the Examinations of seamen for Certificates of Efficiency as Lifeboatmen published with the notification of the Government of India in the late Department of Commerce No. 115-M.II/32, dated the 26th January 1935, namely:—

In Appendix "A" to the said Rules:

- (a) the entries relating to 'Karachi' and 'Aden' shall be omitted;
- (b) the following entry shall be added at the end, namely:—

Port	Date	Examiner
"Vizagapatam	By arrangement with the District Principal Officer of the Mercantile Marine Department, Madras.	Any pilot or other person in possession of a certificate of Competency as Master of a foreign-going ship and who is specially authorised by the District Principal Officer, Madras."

[No. 104-M.A.(12)/51.]

H. C. SARIN, Dy. Secy.

PORTS

New Delhi, the 29th October 1951

S.R.O. 1683.—In pursuance of sections 7 and 13 of the Bombay Port Trust Act, 1879 (Bombay Act VI of 1879), the Central Government hereby appoints the Sub-Area Commander, Bombay, to be a member of the Board of Trustees of the Port of Bombay vice Brigadier Jai Singh resigned.

[No. 8-P. I(125)/51.]

T. S. PARASURAMAN, Dy. Secy.

MINISTRY OF COMMUNICATIONS

POSTS AND TELEGRAPHS

New Delhi, the 10th May 1951

S.R.O. 1684.—In exercise of the powers conferred by section 7 of the Indian Wireless Telegraphy Act, 1933 (XVII of 1933), the Central Government hereby empowers the officers of the Posts and Telegraphs Department mentioned in the Annexure hereto to search any building, vessels or place in which he has reason

to believe that any wireless telegraphy apparatus in respect of which an offence punishable under section 6 of the said Act, is kept or concealed.

ANNEXURE

Divisional Engineer Telegraphs.—

Divisional Engineer Telegraphs	Ambala.
Do.	Jullundur
Do.	New Delhi
Do.	Agra
Do.	Lucknow
Do.	Ajmer
Do.	Nagpur
Do.	Indore
Do.	Jaipur
Do.	Patna.
Do.	Ranchi
Do.	Bombay
Do.	Poona
Do.	Ahmedabad
Do.	Rajkot
Do.	Madras
Do.	Visakhapatnam
Do.	Bangalore
Do.	Trichirapalli
Do.	Shillong
Do.	Calcutta
Do.	I/C Training Class Jabalpur
Regional Engineer Maintenance	Calcutta
Do.	Bombay
Do.	Madras
Do.	New Delhi
Divisional Engineer Telegraphs	T&D Circle Jabalpur
Assistant Chief Engineers.	P.&T. Directorate, New Delhi
Divisional Engineer Telegraphs	Kanpur

Divisional Engineer Wireless—

Divisional Engineer Wireless	P&T Directorate, New Delhi
Chief Electrician Wireless, Alipore.	

Assistant Engineer Wireless—

Assistant Engineer Wireless	Calcutta
Do.	Bombay
Do.	St. Thomas Mt. Radio Madras
Do.	Fort Radio, Madras
Do.	Port Blair
Do.	C.E.W's Office, Calcutta
Do.	Training Centre Jabalpur
Do.	New Delhi
Do.	Gurgaon
Do.	Gauhati
Do.	Monitoring Calcutta
Do.	Monitoring Bombay
Do.	P&T Directorate, New Delhi

[No. T-2/153/50-Part-II.]

K. V. VENKATACHALAM, Dy. Secy.

MINISTRY OF WORKS, PRODUCTION & SUPPLY

New Delhi, the 23rd October 1951

S.R.O. 1685.—The term of office of the nominated members of the Coal Mines Stowing Board being due to expire on the 31st October 1951, in accordance with rule 5 of the Coal Mines Safety (Stowing) Rules, 1939, and fresh nominations under sub-section (2) of section 3 of the Coal Mines Safety (Stowing) Act, 1939,

having been received, the Central Government hereby notifies the names of the following persons who shall take office as members of the said Board with effect from the 1st November, 1951, namely:—

Nominated by the Indian Colliery Owners' Association.

Mr. W. H. S. Michelmores of M/s Bird and Co., Ltd., Calcutta.

Mr. W. M. Birch, of M/S Macneill and Barry, Ltd., Calcutta.

Nominated by the Indian Mining Federation

Mr. A. J. Chanchani, 137, Canning Street, Calcutta.

Nominated by the Indian Colliery Owners' Association.

Mr. Rasiklal Worah of M/s K. Worah and Co. Ltd., Manbhum.

[No. Coal L.25(3)/51.]

U. L. GOSWAMI, for Dy. Secy.

MINISTRY OF LABOUR

New Delhi, the 24th October 1951

S.R.O. 1686.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta, in the industrial dispute between the United Commercial Bank Ltd. and their workmen.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

20/1 GURUSADAY ROAD, BALLYGUNGE, CALCUTTA-19 (GROUND FLOOR)

Reference No. 3 of 1951

Before Shri K. S. Campbell-Puri, B.A., LL.B., *Chairman*

PARTIES:

The United Commercial Bank Ltd.

AND

Their workmen represented by the General Secretary, U.P. Bank Employees Union, Central Office, Kanpur, in respect of the termination of the services (1) Shri K. D. Chaturvedi, (2) Shri Ravi Shankar Mehrotra, (3) Shri D. D. Seth and (4) Shri Shyam Lal Malviya, from Kanpur and Bindki Branches of the Bank.

APPEARANCES:

Shri A. C. Kakkar, Provincial Joint Secretary, U. P. Bank Employees Union, Maithan, Agra, for the employees.

Shri R. V. Govindan, Law Officer, for the Bank.

AWARD

This is a Reference made by the Government of India in the Ministry of Labour to this Tribunal for adjudication by Notification No. LR-90(76), dated 2nd March 1951, pertaining to an industrial dispute between the management of the United Commercial Bank Ltd. and certain employees represented by the U. P. Bank Employees Union relating the issue set out in the Schedule as under:

SCHEDULE

Whether the termination of the services of Messrs. K. D. Chaturvedi, Ravi Shankar Mehrotra, D. D. Seth and Shyam Lal Malviya from the Kanpur and Bindki Branches of the Bank was justified and whether those men should be reinstated.

The Order of Reference was received in the office on the 19th March 1951 and notices were issued to the parties for filing statement of claim on the 14th April 1951 as well as the written statement to the claim by the employer within 15 days thereafter i.e. by 29th April 1951. The claim, however, was not received in time and a reminder was issued to the Union for filing their claim before 28th April 1951; but no response was made from the Union side. Another reminder dated 1st June 1951 was sent to the Union for filing the statement of claim which had become overdue and they were informed that if the claim was not received on or before

9th June 1951, with a copy to the other side, the case would be struck off from the register. At long last the statement of claim was received but the employer also applied for the extension of time for filing written statement which was ultimately filed on the 9th July 1951. On the completion of the pleadings the hearing of the case was fixed at Agra from 6th September 1951, onwards but owing to the non-availability of accommodation the programme was cancelled and a fresh notice was issued intimating the parties and the case was duly heard at Agra from 24th to 27th September 1951. The claim deals with all the four employees in one application but at the time of hearing the case of each complainant was dealt with separately in order to avoid any confusion in the evidence adduced in support of each case on its particular merits as well as to steer clear of the distinguishing features of any one case in the treatment of discussion at the time of arguments.

K. D. Chaturvedi.—The case of Shri K. D. Chaturvedi as stated by Shri A. C. Kakkar on his behalf and as disclosed from the statement of claim is as follows: He was one of the seniormost clerks in Kanpur Branch and also an active member of the Union. He also happened to be an office bearer of the Union. The Bank did not like his Trade Union activities and he was harassed for those activities. It so happened that he was not given Interim Relief as awarded by the All India Industrial Tribunal (Bank Disputes) and his case along with others for the grant of Interim Relief was pending before this Tribunal. His services, however, were dispensed with abruptly along with others on 30th November 1950 on the plea that he had become surplus to the requirements of the Bank. It was further stated that at the time of discharging Shri Chaturvedi, the Bank did not apply for permission in writing of the Tribunal as required under the provisions of Section 33 of the Industrial Disputes Act. Furthermore, the Bank did not apply the principle of the 'last come first go' and although he was a senior man and was shunted off from service. That the plea advanced by the Bank *viz.* one of retrenchment was not justified on facts; as this Bank is one of the prosperous banks in India and had recently opened new branches and the question of retrenchment does not arise. Finally, it was stated that it was a case of victimization as when the Regional Labour Commissioner interfered then he was asked to go to Lucknow in order to remove him from Kanpur, the place of his Trade Union activities. In support of the case, Shri Kakkar adduced documentary evidence only and no witness was examined.

The documentary evidence comprises of three letters detailed as under:

- (1) Letter dated 13th April 1951 sent by Shri K. D. Chaturvedi to the General Manager, Head Office, Calcutta, in reply to Bank's letter No. SM/260/51 dated 5th April 1951. (Ex. A).
- (2) Copy of letter No. SM/260/51, dated 5th April 1951 from Bank to Shri K. D. Chaturvedi referred to above. (Ex. B).
- (3) Letter, dated 24th March 1951 addressed to the Chairman, Central Government Industrial Tribunal, Calcutta, through U.P. Bank Employees' Union by Shri Chaturvedi, which constitute a reply to the application under Section 33 of the Bank for permission to terminate his services. (Ex. C).

On the Bank side some legal objections were raised regarding the validity of the Reference and the competency of the Union to represent the complainant. On merits the Bank's case briefly was that the management was not at all aware at the time of the termination of the services of Shri Chaturvedi that he was an office bearer or a member of the U.P. Bank Employees Union and that his services were terminated as a measure of economy as retrenchment in the staff had become necessary at Kanpur. He was, however, paid three months' salary and allowances in lieu of notice and was furthermore made an offer with benefits of continued service when a post fell vacant in another office but he declined to accept the offer. Shri R. V. Govindan on behalf of the Bank stated that the offer has now lapsed and he was not in a position to say whether the same offer can be made to the applicant by the head office when any other vacancy arises. Documents comprising of Exhibits 1 to 5 relating to the offer of new appointment referred to above as well as a receipt in settlement of the claim issued by Shri K. D. Chaturvedi at the time of making over the charge were tendered in evidence.

Now as the preliminary legal objections raised by the Bank go to the root of the case, the same will be dealt with at the outset. Shri Govindan arguing on behalf of the Bank contended that the employer was not aware of any reference to the Government which resulted in the issue of the Notification No. LR.90(76), dated 2nd March 1951, and that it was absolutely essential for the Government to consult the employer and apply their mind before issuing any Notification in order

to see that there was an industrial dispute existing as contemplated under Section 10(1). Reliance was placed on the following legal precedents.—

- (1) Labour Law Journal—Vol. 1—1951 Supplementary—page 123 (Chittivalasa Jute Mills Ltd. Vs. Their Workers).
- (2) Labour Law Journal—March 1951—page 219 (Raju's Cafe, Coimbatore and others Vs. Industrial Tribunal, Coimbatore and another).
- (3) Labour Law Journal—December 1950—page 1329 (Commonwealth Trust Ltd., Textile Factory, Kozicode and their workers).

In the first case, the following issue was posed;

Page 126: "(1) Was there an industrial dispute as defined in the Industrial Disputes Act with reference to the three matters mentioned in the annexure to G. O. Ms. No. 4260 Development, dated 17th August 1949, on its date, and if there was not, was the reference in the said Government order invalid and has the industrial tribunal no jurisdiction to adjudicate thereon?"

and the learned Adjudicator in deciding this issue came to the following conclusion: "There was no attempt on the part of the workers after the dismissal or the Union to approach the management with a request for reinstatement. In such circumstances it cannot be said that there was an "industrial dispute" as defined in the Act between the two parties. I therefore find the issue against the workers and hold that the reference is invalid and that the tribunal has no jurisdiction to adjudicate."

From the above it appears that the decision was based on a certain fact and the issue was not considered in all its legal implications to interpret the powers of the Ministry under Section 10(1) and the one fact which prevailed with the adjudicator in laying down the above proposition was that there was no reliable evidence to prove that there was a demand on the part of the dismissed workers for reinstatement and the management refused to reinstate them. It was found that in these circumstances there was therefore no industrial dispute on the specified date viz. 17th August 1949, between the workers and the management as defined in the Industrial Disputes Act. Now in this case it is in evidence that the General Secretary of the U. P. Bank Employees Union in a letter No. F/108/51, dated 26th January 1951 informed the Chief Accountant, United Commercial Bank Ltd., Calcutta, that their notice served on the staff was illegal, unwarranted and uncalled for and that the Bank had not obtained the permission from the Central Government Industrial Tribunal at Calcutta for closing the said office and to retrench the staff, as their case for increment etc. was pending for adjudication. The Bank's attention was also drawn to Para. 325 of the All India Industrial Tribunal (Bank Disputes) award published on the 12th August 1950. This clearly indicates that the Union approached the management to re-consider the cases of discharged employees and the facts of this case are not identical with the facts of Chittivalasa Jute Mills Ltd. case cited by the other side. The other important factor worthy of note in this case is that the employer admittedly made an offer to Shri Chaturvedi to come back in Bank's service as evidenced from Ex. B—copy of letter No. SM/260/51, dated 5th April 1951—sent by the Deputy Chief Accountant to Shri Chaturvedi and it is futile to urge that the reinstatement question was not agitated before this reference was made. This letter may well be re-produced for facility of reference and reads as follows:—

Ex. B: "With reference to your letter of the 16th ultimo addressed to us through our Kanpur Office we are agreeable to reinstate you in the Bank's service with the benefit of continuity of service.

Please report, on or before Monday, the 16th instant, to the Manager of our Lucknow Branch who will issue orders for your posting either at Lucknow or at our proposed office at Gorakhpur, as may be necessary. We regret our inability to post you at our Kanpur Branch, for want of a vacancy there."

The complainant in his reply to this letter Ex. B declined to accept the offer on the plea that the matter has already been referred to the Tribunal as evidenced from Ex-A. The Bank furthermore filed an application under Section 33 for the express permission of the Tribunal to discharge Shri K. D. Chaturvedi from service as evidenced from the original application, dated 17th February 1951, and in another letter, dated 18th April 1951 (Ex. 3) in reply to Ex-A mentioned above stated that their offer to take him back in service was made in all sincerity but the offer was not accepted by him and that the question of withdrawing their

application to the Tribunal did not arise. This documentary evidence is well indicative of the fact that the employer was aware that the matter of reinstatement of Shri Chaturvedi was agitated before the Ministry and a reference was made for adjudication and the position taken up by the Bank representative at the time of hearing that the employer was not aware about the reference stands repudiated. At any rate the authority relied upon is not in point and is clearly distinguishable on facts and is thus of no avail in support of the objection that the Reference was invalid. The other legal precedent relied upon is a decision of the Madras High Court in the case of Raju's cafe and others. The matter went to the High Court on an application for a writ of *Certiorari* and their lordships on the legality of reference came to the conclusion that on the facts of the particular case the order of Reference was made on the information supplied by one of the parties to the dispute and that such a case under Section 10(1) was not competent but should have been made under Section 10(2). The decision was given on some other points also which related to clubbing together several employments and workers in one reference and to the information received from the judicial Tribunal about the existence or apprehension of disputes. Section 10(1) reads as follows:—

Section 10(1): "If any industrial dispute exists or is apprehended, the appropriate Government may, by order in writing,—

- (a) refer the dispute to a Board for promoting settlement thereof; or
- (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or
- (c) refer the dispute to a Tribunal for adjudication.

Provided that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceeding under this Act in respect of the dispute may have commenced."

Even a cursory review of Section 10 read with Section 12(5) when considered together will show that the reference of a dispute to a Tribunal is made by Government under Section 10(1) (c) when an industrial dispute exists or apprehended. The essence of Section 10(1) (c) is the discretion of the Government and this discretion naturally can be exercised either independently or after considering some preliminary report on the matter. The whole concept of making reference of disputes to Board, Court or Tribunal under sub-clause (1) leaves the matter to the discretion of the Government and the term "on its own motion" must be understood in juxtaposition to the word "motion" or the prayer of the parties to a dispute asking for a reference to a Tribunal. It seems, therefore, clear to me that when the reference is made under Section 10(1)(c) which admittedly is the position in this case it is not at all necessary that any motion on behalf of the parties should have been made. When a certain dispute comes into the notice of the Ministry it rests with the Ministry on its own motion to refer the matter or not for adjudication and the question of consultation hardly arises. The High Court judgment relates to a different matter. The question which was posed in that case was with regard to the collective reference which was made by the Government as well as that the dispute was not specifically mentioned. I am therefore of the considered opinion that the authority which otherwise warrants respect at the hands of the Tribunal is clearly distinguishable. The other authority viz. Commonwealth Trust Limited, Textile Factory, Kozicod, and their workers relied upon, relates to the plea of reinstatement and estoppel against the worker by reason of the acceptance of the notice pay and is also not in point so far as the validity of the Reference is concerned.

To sum up the matter, my view is that when any reference has been made by the appropriate Government on its own motion and not in the case of a public utility concern where notice under 22 of the Act was given, the Government has power to refer any Industrial Dispute to a Tribunal for adjudication. In the case again there is no evidence on the record to show that Employer was not consulted and on mere assertion without examining any witness that they had no knowledge and had never been consulted, it would be going too far to hold that no dispute existed. At any event the objection appears to be devoid of any merit when considered in the light of the offer made by the Bank itself for taking back the employee in their service as discussed above. The same is repelled.

The other objection which was urged in a lukeworm manner is that the Union was not competent to represent the case of the employee. In this respect suffice to say that under the reference, its copies were forwarded to the United Commercial Bank Ltd., Calcutta and to the General Secretary, U.P. Bank Employees Union, Central Office, Kanpur and the officers concerned. The objection moreover

uns counter to the whole concept of the Act under which an industrial dispute is referred for the purpose of collective bargaining. The definition of industrial dispute under Section 2(k) is very much clear and the point does not require any further elaboration. Section 36 of the Industrial Dispute Act which deals with the representation of parties furthermore furnishes a complete answer to the objection that a workman who is a party to the dispute shall be entitled to be represented by an officer of a registered trade union of which he is a member. The statement of claim on behalf of the employees was also filed by the Provincial Joint Secretary, J. P. Bank Employees Union, Agra and the Bank representative did not enlighten us as to why the U. P. Bank Employees Union was not competent to represent the employee. The objection appears to be frivolous and must be repelled. As these two objections were raised in general, the finding would govern the case of all the four employees under Reference whose cases are treated separately.

On facts the Union case has been stated in the beginning and the chief argument advanced on behalf of the employee was that the Bank shunted him off along with others on account of his trade union activities and as such it was a case of victimization. The Union representative however did not care to bring any evidence on the record as to what were his trade union activities and the Bank had ever taken exception to his activities and wanted to get rid of him. The only argument everytime was that it was a known fact and the management must have the knowledge of the trade union activities of the employee and it was easy for the head office to deny this fact. It was however vigorously argued that the plea advanced by the Bank viz. one of retrenchment was not justified because the Bank was to be considered as one unit and was admittedly a prosperous Bank. It was stressed that the Balance Sheet issued by the Bank covers all branches and it was fallacious to urge that Kanpur branch was running at a loss and the employees of that branch must go when they could be easily absorbed in other branches. Furthermore it was urged that the principle of 'last come first go' was not applied which indicates that the axe was applied with a purpose in order to remove Shri Chaturvedi from service. It was next urged that the cases of U. P. employees were pending before the Tribunal under Notification No. LR.2(273), dated 21st February 1950 and the implementation of Interim Relief award for Shri Chaturvedi was also pending before this Tribunal and in the circumstances it was obligatory on the employer to seek express permission under Section 33 before discharging him from service under the amended Act of 1950. Lastly, it was urged that the Bank on their own accord made an offer to Shri Chaturvedi for reinstatement with continuity of service and this manifestly goes to show that the Bank on further consideration realized their mistakes in not obtaining the permission and that on this short ground the claim should succeed. It was explained that the offer was declined because the management wants to send him out of Kanpur in order to crush the Trade Union activities of the Union of which he is an active member and office bearer at Kanpur.

Shri Govindan on behalf of the Bank while repudiating the argument of the other side explained that the offer was made in all sincerity and that the Bank was not aware of the Trade Union activities but Shri Chaturvedi declined and now the same has lapsed and it is for the head office to reconsider if they so desired. Regarding the application of the principle of last come first go, it was contended that it was not incumbent upon the employer to apply that principle and more specially in the case of branches it was all the more difficult to abide by this principle. It was argued that the applicant had accepted three months salary in lieu of notice as evidence from the receipt (Ex. 1) and by its conduct he was barred from making any claim. Reference was made to some of the authorities discussed in the case of Commonwealth Trust Ltd. (Labour Law Journal—Vol. 2—December 1950—page 1329); but the difficulty is that the Bank itself made an offer to the applicant after that receipt and in this view of the matter the question of acceptance of salary hardly remains material and the abstract legal aspect is of no consequence. The other important aspect of the case is that permission under Section 33 was admittedly not obtained and Shri Govindan in his statement as withdrawn the application which was filed in this Tribunal by his statement which reads as follows:—

"In view of the legal position taken up by me in the original Reference No. 3 of 1951 [Notification No. LR-90(76)], dated 2nd/16th March 1951 I withdraw the application filed by the Bank under Section 33 for permission to discharge Shri K. D. Chaturvedi.

CAMP: AGRA;

14th September 1951

(Sd.) R. V. Govindan,

Law Officer of the United Commercial Bank.

this connection the position of the Bank as stated by Shri Govindan was that the Interim Award was declared invalid by the Supreme Court and could not be enforced and as such there were no proceedings pending in the eye of law at the time of discharge. In other words it is admitted that proceedings for the implementation of Interim Award were pending before this Tribunal and Shri K. D. Chaturvedi was concerned; but as the Interim Award was declared invalid the proceedings were not to be considered to be pending in the eye of law. On the strength of this argument it was maintained that no permission was necessary under Section 33. The argument however collapses to scrutiny when considered in the light of other facts viz. that Reference No. L.R.2(273), dated 21st February 1950 was pending in November 1950 when this employee was discharged and in the light of the construction put upon the words "workmen concerned" in the award made in Reference No. 169 of 1950 of this Tribunal, the proceedings were pending before the Tribunal in spite of the implementation of the Interim Award cases. The bottom of the argument is further knocked by the solid fact that the discharge took place in February 1950 while the Supreme Court decision setting aside the award was given in 1951. Obviously the stand taken up by the Bank representative has no legs. My finding accordingly is that the discharge was not justified and to this extent the issue is answered against the Bank. The only other question for determination is as to whether the complainant be reinstated or compensated. In this respect in the first place the issue referred to the Tribunal closes with the words "whether these men should be reinstated" and the question of compensation has not been referred to me as I find in some of the References. This aspect also prevailed with me in deciding the previous case (Reference No. 169 of 1950). I am therefore not prepared to consider the question of compensation but would straightaway allow reinstatement in answer to the Reference. Secondly the employer also made an offer to take him back in service and it appears that reinstatement is not difficult for the employer. In the result it is held that the termination of the services of Shri K. D. Chaturvedi was not justified and he must be taken back in service, and paid his back salary and allowances for the intervening period and his direction will be carried out within one month with effect from the date when the award becomes operative.

Before concluding his case it may be pointed out that so far his place of reinstatement is concerned I would leave it to the good sense of the employer to reinstate him at Kanpur or at some other place because I am not impressed with the view of the Union representative that workers should not be shifted from one place of activity to another and to the employer was bound to keep a Union worker at one place, for all times to come.

Ravi Shankar Mehrotra.—The case of this employee as stated by the Union representative and disclosed from his application briefly is that he was one of the active members of the Union and acted as strike commander at one time and had to go to jail in that connection. It was stressed that due to his Trade Union activities the Manager of Kanpur branch became inimical towards him and used to find fault with his work and harassed him in various ways. He was working as Assistant Cashier at Kanpur and the Manager in order to demote him addressed him as a clerk in his communication, dated 12th August 1948 and not Assistant Cashier which post he actually held as evidenced from Ex. B. The matter was referred to the Regional Labour Commissioner and the Manager of Kanpur branch in his letter (Ex. D) explained the position and rather apologised. It was alleged that the conduct of the Manager was indicative of the fact that he wanted to get rid of Shri Ravi Shankar Mehrotra on account of his Trade Union activities and ultimately his services were terminated by the head office on 30th November 1950 without obtaining the necessary permission under Section 33 although proceedings regarding Bank cases were pending before the Tribunal at that time.

The Bank representative in reply raised the preliminary objection that the Reference was invalid inasmuch as no dispute existed between the parties and that the management was not consulted by the Ministry before making this Reference. This objection has already been dealt with by me in the case of Shri Chaturvedi and the finding given therein prevails with the result that the objection is repelled. On merits Shri Govindan, Bank representative, denied categorically all allegations regarding the Trade Union activities of Shri Mehrotra and further submitted that even if he acted as a strike commander and went to jail that has nothing to do with his discharge. It was submitted that the Manager's apology to the Union in his letter (Ex. D) was a formal reply and rather shows that the Manager did not bear any enmity with Shri Mehrotra and was prepared to rectify the mistake about the designation of Shri Mehrotra which crept in inadvertently. Shri Govindan maintained that it was not at all a case of victimization and the services of Shri Mehrotra were terminated as a measure of economy and the consent of the Chief Cashier was not necessary. The Chief Cashier at any rate

did not object to the discharge and that Shri Mehrotra was rather given a certificate on his request and left the service without any grievance. Finally it was argued that permission of the Tribunal under Section 33 was not necessary because no proceedings were pending before the Tribunal so far this employee was concerned and the cases of the staff for the implementation of Interim Award could not be considered because the Interim Award was held invalid by the Supreme Court.

Now so far the Trade Union activities of the employee and the attitude of the Manager towards him which forms the background of the complaint are concerned the complainant has not come into the witness box nor any tangible evidence has been produced to connect the Trade Union activities with the discharge and — such I have no hesitation in coming to the conclusion that the discharge does not amount to victimization. In regard to the conduct of the Manager, a copy of the letter (Ex. D) which was construed as an apology from the Manager is self-explanatory and may well be re-produced as under:

Ex. D: "We are in receipt of your letter of 21st instant. The letter of appointment which was handed over to you, one copy of which was signed by you and returned to us, has been wrongly interpreted by you. On going through your Service Record we found there was no letter of appointment consequently we issued a fresh letter of appointment as of 12th August 1948 in order to keep one in record. It was not our intention either to victimize you or to get rid of you. It is unfortunate that you should have misunderstood us. We would have appreciated very much if you had referred the matter to us before rushing to the Employees Union or the Regional Labour Commissioner. We have no objection if you produce the letter of appointment given to you for changing your designation from Clerk in Cash Department to Assistant in Cash Department or assistant cashier.

(Sd.) S. J. Uttamsingh,
Manager."

On the perusal of this letter it appears to me that the Manager acted in gentlemanly manner and lost no time to rectify the mistake. The employee rather created fuss over the small matter and it hardly proves any spite or enmity on the part of the Manager against the employee. The real grievance which is a matter for determination before the Tribunal is that Shri Mehrotra was discharged on the plea that his services were no longer required without assigning any good reason that his discharge had become necessary as a measure of economy. Some proceedings regarding the implementation of the Interim Award were admittedly pending before the Tribunal under Reference No. LR.2(273), dated 21st February 1950 and the argument advanced by the Bank side that the Interim Award had been declared invalid is of no avail inasmuch as the award was declared invalid in 1951 while the discharge of the employee was made in November 1950. A large number of Bank cases from Uttar Pradesh State were also pending in general before the Tribunal under Notification No. LR.2(273), dated 21st February 1950 and this Bank was also a party. Under these circumstances it was idle to urge that no proceedings were pending and the permission under Section 33 was not necessary. I have already held in my award in Reference No. 169 of 1950 that the term 'workman concerned' used in Section 33 has a wide import and under the provisions of Section 18 of the Act which deals with persons on whom settlements or awards are binding, the dispute must be considered as one and indivisible one and even if any one employee had no particular grievance before the Tribunal still the pendency of the proceedings will affect the whole lot including workmen who are employed in the establishment before or after. In these circumstances it seems clear to me that it was obligatory upon the management to obtain express written permission before discharging the complainant from service under the amended Act of 1950. In the result my finding is that the discharge order was bad in law and as such was untenable. In consideration of all facts and circumstances, however, I am of the opinion that it is not a case for reinstatement because Shri Mehrotra has been re-employed which fact has been admitted by Shri Kakkar but it is stated that he may have been working to eke out his livelihood which shows that the Union representative is not very sure. The employee has not cared to come into the witness box and was not present and in the circumstances I do not think that the Bank should be called upon to take him back in service and that the merits of the case would be amply met by awarding him retrenchment relief which I assess at the rate of one month's salary for each completed year of service. It may be noted that he has been already paid three months' salary but the same was given in lieu of notice under the directions embodied in para. 322 of the All India Industrial Tribunal (Bank Disputes) award;

and Shri Govindan in his argument sought to treat that part of salary as compensation and at the same time admitted in his arguments that the directions of para. 322 of the aforesaid award referred to in the order of discharge did not apply in view of the Supreme Court order. The argument advanced above is clearly contradictory and cannot be accepted. Shri Mehrotra was a permanent employee and at any event he was entitled to some retrenchment relief at the time of his discharge besides the salary for the notice period. The direction given above shall be carried out within one month from the date when the award becomes effective.

D. D. Seth.—The applicant was not present and it was stated by both sides that he has already been taken back in the service of the Bank and his case requires no adjudication. The complaint was not pressed and the same is filed.

Shyam Lal Malviya.—Shri Kakkar on behalf of the employee stated the case as under: Shri Malviya joined the Bank in 1944 and was one of the oldest employees of the Bank. He was also the President of Bindki Unit of the Employees Union and his activities were not liked by the management and he was therefore harassed in various ways. He was once abused by the Manager whereupon Shri Malviya approached the General Manager and this made the Kanpur Manager more inimical to him. His services were abruptly terminated on 30th November 1950 in order to crush the Trade Union activities along with others although nothing was against him. It was further stated that he was not an officer and satisfied the definition of workman; and the plea advanced by the other side on the basis of an agreement was not tenable. That his services were terminated during the pendency of the proceedings relating to the Interim Relief and increment of the staff of the Bank of U.P. Branches including the employee. It was also stated that he was a senior man and his seniority was not considered on the principle of 'last come first go' at the time of discharge, which was made on account of ulterior motive as such his case was one of victimization.

The Bank in reply raised some more legal objections besides those raised in previous cases of Shri K. D. Chaturvedi and Shri Ravi Shankar Mehrotra. The new objections raised in this case are to the effect that Shri Malviya was an officer under the terms of an agreement dated 20th December 1948; and his case was not covered by the Industrial Disputes Act. The other objection was that his services were terminated under the terms of the agreement and in his case no permission under Section 33 of the Industrial Disputes Act was necessary. Several documents were produced by the Union side in proof of the pleas that his discharge was due to his Trade Union activities and that he was given the benefit of B. B. Singh award and as such Shri Malviya was treated as a workman, who alone were entitled to the benefit of B. B. Singh award. Some documents were also produced to show that despite his request to absorb him in proposed office at Gorakhpur his case was not considered and that he was made to make over the charge without any good reason. The Bank relied upon the agreement a copy of which Ex. 1 was placed on the record as well as on the letter of discharge Ex. 2 wherein a reference was made to the agreement, dated 20th December 1948 and on receipt (Ex. 3) given by Shri Malviya in favour of the Bank having received the payment of Rs. 1,093/2/- in lieu of six months notice.

Now on the examination of all the facts and circumstances I find that the controversy centres round two points: (1) as to whether Shri Malviya joined the Banks service in terms of certain agreement; and (2) as to whether that agreement was superseded when he was given the benefit of B. B. Singh award which admittedly was meant for the benefit of workmen. The second point also deals with the legal objection viz. that he was an officer. This point, however, needs no elaboration in view of the finding already given in Delhi Bank Disputes award of this Tribunal to the effect that Cashiers satisfy the definition of 'workman' as laid down under Section 2(s) of the Act and their duties are not of directing and controlling nature as to exclude them from the category of workmen. The Bank representative referred to two legal precedents in this connection and one of these is a decision of the Labour Appellate Tribunal, Bombay which must be attended to as the same is binding upon me if it applies on the facts of this case. This decision was given on an appeal between W. C. Raymond Vs. Ford Motor Co. of India Ltd. and their lordships of the Labour Appellate Tribunal while defining "who workman is" held that the appellant whose work was mainly of supervisory nature was not a workman within the meaning of the Industrial Disputes Act. In this case the appellant was a carriage foreman of the respondent Company and his duty mainly was to supervise the duties of repairing staff under him and for that purposes he had to do the work of checking brakes, focusing lights and checking the traffic indicators in order to show to his men how to do the work. In view of his duties the Tribunal

held that he was not a skilled manual worker but was rather supervising the work of others and as such was not a workman. Applying this principle on the facts of this case it will be seen that the duties of a Cashier are not of supervisory nature but that of a skilled worker. The legal precedent accordingly is clearly distinguishable and has no application. The other authority cited by the Bank representative was the decision of the Industrial Tribunal, Bombay, (Labour Law Journal—November 1950—page 1149) which formed the subject of the decision in appeal of the Labour Appellate Tribunal said above and need not be considered. Over and above the benefit of B. B. Singh award was admittedly given by the Bank to him, and this clinches the matter that he was treated as a workman notwithstanding that he was mentioned as an officer in the agreement. I hold accordingly and overrule this objection.

The other point forms the real grievance and in this respect the position of the Union on behalf of the employee is that he too like others was victimized on account of his Trade Union activities and was shunted off on 30th November 1950 along with three others in order to get rid of them. On the other hand the Bank's stand is that his case is covered under the agreement and in terms of the agreement the Bank had a right to terminate his services at any time either by giving him six months notice or on payment of six month's salary in lieu of notice. Reliance was placed in this connection on paragraph 1 of the agreement which reads as follows:

- "1. That the Cashier shall be and continue to be the Cashier of the Bindki office of the Bank with effect from the First day of February One Thousand Nine Hundred and Forty-six, at a monthly salary of Rupees One hundred twenty only during the continuance of this agreement as remuneration for his service. The service shall be determinable on either side by six Calendar months' Notice to that effect subject as is hereinafter provided."

Paragraphs 2 to 15 hereafter deal with the duties, liabilities and responsibilities devolving upon the Cashier as such Cashier, the deposit of security in terms of the agreement and the liability of Cashier in respect of losses, damages, etc. In paragraph 15 it has been further stated that in case of dereliction of duties or insubordination or upon his becoming incapacitated in performing his duties for 90 consecutive days the Cashier's services could be terminated without notice and without prejudice to any of the rights of the Bank. It was argued by the Bank representative that the terms of para. '1' gave the employer right to terminate his services as well as to the employee to leave the service on six months notice and other provisions of agreement related to the duties and liabilities etc. Shri Kakkar on behalf of the employee, however adverted my attention to paragraph 19 wherein it is laid down that the Bank shall be at liberty from time to time to transfer the Cashier to act as a Cashier of the Bank at any other branch in India and in the event of such transfer the Cashier shall Act as Cashier of the Bank at the place or places where he may be transferred on the terms and conditions contained in these presents except as to salary which shall be fixed by the Bank at the time of such transfer. It was argued that under Clause 19 of the agreement the Bank if they wanted to keep him in service could transfer him to some other place but the Bank was bent upon to terminate his services unjustifiably. Now case of Shri Malviya having been clubbed together with Shri Chaturvedi, Shri Seth and Shri Mehrotra and the discharge having taken place on the same date presumably gives an impression that the Bank wanted to terminate the services of all four at the same time. This circumstance lends weight also to the plea of the Union that the Bank was actuated by some reason which is not clear on the record to discharge all four persons without giving them any proper notice on one and the same day. The word used in the order of discharge in all four cases is also to the effect that their services will come to close "at the close of business today". The difficulty however which presented itself was that the Union had made allegations of the Trade Union activities of these employees but did not at all care to bring them into the witness box or to prove beyond any manner of doubt that their discharge was actuated by ulterior motive. I am conscious that while administering natural justice some presumptions can be taken into consideration but sheer allegation does not become an evidence without any material brought on the record and suspicious however grave and serious they may be, the same can never be treated as a substitute for proof however light it may be. In the case of Shri Malviya furthermore there is a clear agreement and the employment of Shri Malviya shall have to be determined within the four corners of the agreement. Now paragraph 1 quoted above is sufficiently clear that both sides had a right to serve the other side with a notice of six months for the termination of the services. In these circumstances Shri Malviya was entitled to six months salary which has been paid to him. I have therefore no option to speculate on other things and the terms of the agreement

which have its contractual value must have their way. In the result I see no merit in the claim and the same is disallowed.

NOW, THEREFORE, THIS TRIBUNAL MAKES ITS AWARD IN TERMS AFORESAID, THIS THE 6TH DAY OF OCTOBER 1951.

K. S. CAMPBELL-PURI, *Chairman*,
Central Government Industrial Tribunal, Calcutta.

[No. LR.90(76).]

S. NEELAKANTAM, *Dy. Secy.*

New Delhi, the 24th October 1951

S.R.O. 1687.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to publish the following award of the Industrial Tribunal, Calcutta, in the industrial dispute between the Allahabad Bank Ltd. and their workmen.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA.

20/1 GURUSADAY ROAD, BALLYGUNGE, CALCUTTA-19, (GROUND FLOOR).

Reference No. 4 of 1951.

Before Shri K S. Campbell-Puri, B.A., LL.B., *Chairman*.

PARTIES:

The Allahabad Bank Ltd.,

Vs.

Their workmen represented by the U.P. Bank Employees Union, Central Office, Kanpur, in respect of the termination of services of Shri Puroshottam Das Tandon from Mirzapur Branch of the Bank.

APPEARANCES:

Shri Puroshottam Das Tandon in person.

Shri A. C. Kakkar, Provincial Joint Secretary, U.P. Bank Employees Union, Agra, for the employee.

Shri Dhakkanlal Gupta, Agent, Allahabad Bank, Agra, for the Bank.

AWARD

The Government of India in the Ministry of Labour by their Notification No. LR-90(74), dated 25th April 1951 have referred an industrial dispute between the Allahabad Bank Ltd. and their workmen for adjudication in respect of the matter specified in the Schedule. The Schedule reads as follows:—

SCHEDULE

Whether the termination of the services of Shri Puroshottam Das Tandon from the Mirzapur Branch of the Bank on or about the 5th July 1950 was justified and if not whether he should be reinstated or suitably compensated.

The Reference was received on 2nd May 1951 and notice was issued to the parties for filing statement of claim and written statement on 21st May 1951. The pleadings were completed on the 9th June 1951 and the case was fixed for hearing on 23rd August 1951 at Agra along with the other Reference No. 3 of 1951 pertaining to United Commercial Bank Ltd. The hearing, however, could not take place on account of the non-availability of accommodation and ultimately this case came up for hearing at Agra on the 27th September 1951. Shri Puroshottam Das Tandon appeared in person and was represented also by Shri A. C. Kakkar, Provincial Joint Secretary of the U.P. Bank Employees Union. The Bank was represented by Shri Dhakkanlal Gupta, Agent, Allahabad Bank Ltd., Agra. The complainant's case put briefly is:

Shri Puroshottam Das Tandon was a Cashier in the Allahabad Bank and was also an active member of Mirzapur unit of Bank Employees Union; which was in fact founded by him. His Trade Union activities were not liked by the Head Cashier of Mirzapur under whom he was working and the applicant was harassed on various occasions. One day he was assaulted by the Head Cashier and on report to the Sub Agent, the Head Cashier threatened him to shunt him out of service. Shri Tandon also sent a report to the Treasurer whereupon the

Treasurer expressed regrets for the action of the Head Cashier. On the 5th July 1950 the applicant however was served with a notice that his services had been terminated without assigning any reason. He was neither charge sheeted nor afforded any opportunity to explain himself. He sent several letters enquiring the reason of the termination of his services but no reply was forthcoming. The Labour authorities were also approached by the Union but of no avail and accordingly the report was sent to the Ministry over the matter. It was further stated that no permission was obtained although the proceedings were pending before the All India Industrial Tribunal (Bank Disputes) as well as before this Tribunal. That in the circumstances it was a case of victimization as his discharge was due to his Trade Union activities. In support of the claim the applicant was examined and some documentary evidence was also adduced.

The Bank representative in reply stated his case as follows.

Shri P. D. Tandon was taken in Bank's service on 7th February 1950 on the usual terms of probation. His appointment was made on the recommendation and guarantee of Treasurer Lala Monmohan Das of Allahabad who on 25th June 1950 advised that there were serious complaints against Shri Tandon and asked for his dismissal. In pursuance of the Treasurer's request the services of the employee was terminated and instructions to that effect were issued to Mirzapur Branch Agent on 30th June 1950. It was stated that one of the conditions of appointment of the staff is that during six months period of probation services can be terminated without notice. Moreover when his guarantee was withdrawn by the Treasurer the Bank could not retain him in service. The Bank denied that his dismissal had any connection with the Trade Union activities. Finally, it was stated that in the case of probationer permission under Section 33 was not required and it was added that the Bank subsequently enquired from Lala Monmohan Das of the circumstances under which he asked for his discharge and reply was received which was tendered in evidence along with other documentary evidence connected with the case.

Shri Tandon in his examination gave almost the whole history of his employment since the time that he worked as a relieving hand upto the time of discharge from service. He also made specific references to his Trade Union activities and claim to be the founder of the Mirzapur unit where he re-organized the Union by enlisting the employees of Central Bank, Bharat Bank as well as Allahabad Bank into membership and maintained that the Head Cashier under whom he was working became inimical to him on account of his Trade Union activities. Reference was also made to an incident when he was pushed back from the chair by the Head Cashier and was given a slap and on report the Head Cashier had to apologise for his conduct. It was deposed further that the Head Cashier notwithstanding of the apology and regrets which he expressed for his conduct bore grudge against him and sent reports with regard to his work which resulted in his discharge from service. It was stated that on enquiry which took place some time after the termination of his services he was found innocent. The employee in his examination also explained that the period he worked as relieving hand at Kanpur city, Jhansi and Etawah, although was not to be considered as a period of regular employment yet he joined the Bank's service as a regular employee in December 1949 on a basic salary of Rs. 60 plus Dearness Allowance Rs. 40. He deposed further that when he joined as a regular employee he was relieved from Etawah and joined Kanpur in place of an employee who had died but no letter of appointment in writing was given to him.

On the strength of the deposition of Shri Tandon and the documentary evidence adduced in support of it, the argument advanced by Shri Kakkar on behalf of the employee was two-fold: (1) Shri Tandon was working as a relieving hand for a sufficiently long time and entered the Bank's service as a regular employee in December 1949 and had thus put in more than six months service at the time of his discharge viz. in July 1950. (2) That order of discharge was illegal for want of permission. It was contended that after the period of six months, confirmation was to follow automatically and as such the plea of the other side that he was a probationer and his services could be dispensed with without any notice had no merit. The other argument urged by the Union representative was to the effect that under the provisions of Section 33 read with Section 2(s) wherein the word 'workman' has been defined, express permission in writing before discharging Shri Tandon was necessary. Reliance was placed on an award of the All India Industrial Tribunal (Bank Disputes) (published in the *Gazette of India* dated 4th February 1950) in the case of Shri Om Prakash Kalra. Finally, it was submitted that Shri Tandon was the Bank employee and not of the Treasurer and the Bank plea that he was discharged on the request of the Treasurer was of no avail. In this connection reference was made to in the case of Shri Madan Lal Sharma decided by the All India Industrial Tribunal (Bank Disputes) published

in the *Gazette of India*, dated 18th February 1950—pages 241-242 as well on this Tribunal's award in the case of Mahabir Prasad Jain of Bharat Bank in Delhi Bank Disputes award.

The stand taken up by the Bank representative in reply was that in the case of Cash Department employees it is almost impossible and impracticable for a bank to retain the services of any one whose guarantee was withdrawn by the Treasurer and furthermore Shri Tandon was a probationer at the time of discharge having joined Bank's service in February 1950 as stated by the Treasurer in his letter (Ex. 3) and mentioned in the written statement of the Bank (Ex. 1) prepared according to Bank record. It was next urged that in the case of probationers permission under Section 33 was not necessary because a probationer was not to be treated as a permanent employee.

Now on examining the evidence and the appraisalment of the arguments of both sides the ultimate analysis of the case presents two questions for determination—one on facts and the other relating to the legal aspect of the case. On merits the main question for determination is as to whether Shri Tandon was a probationer. In this respect the controversy centres round the date of appointment while the date of discharge from service is admittedly 5th July 1950. The employees assertion is that he joined the regular Bank's service in December 1949 at Kanpur and then was sent to Allahabad and after a stay of a few days went to Mirzapur in February 1950. On the contrary the position taken up by the Bank is that when he came to Mirzapur in February, he became the regular employee of the Bank and the period spent by him at Kanpur and Allahabad was also in continuation of his service as a relieving hand. Both sides have failed to file any reliable and tangible documentary evidence on the question of actual date of joining the Bank's service. The Bank representative was called upon to produce the letter of appointment but he pleaded his inability and averred that the date of appointment mentioned in the written statement on the record and a copy of which has already been produced (Ex. 1) as well as given in the letter of Lala Monmohan Das (Ex. 3) is a sufficient proof that Shri Tandon was taken on regular Bank's service in February 1950 and not in December 1949 as alleged by him. The Union also failed to call upon the Bank in time before the hearing to produce the letter of appointment which is stated to be in the head office and in these circumstances as observed above the case was not properly presented on this crucial question. The date of appointment forms a significant factor inasmuch as if it is taken from December the period of service comes to more than six months and in case the point of time is taken from February it falls short of six months which period is a determining period for the purpose of confirmation. I have given my careful consideration over the matter and in the absence of any tangible direct evidence it appears that his case did not come up before the management for confirmation and it is just possible that the period spent by him at Kanpur and Allahabad was not counted in the regular Bank service but was treated as a period in continuation of his work as a relieving hand. The other aspect of the question is that he might have been taken straightaway as a permanent hand when he had already served for a pretty long time as a relieving hand but for want of letter of appointment the matter is thus shrouded in obscurity. At any event the main question for determination is as to whether his discharge from service was justifiable as put in the issue. In this respect the position of the Union is that he was an active trade unionist and had re-organized the unit at Mirzapur and his activities were not liked by the Treasurer. This is evidenced by the sworn testimony of Shri Tandon himself without any rebuttal; but his evidence again is not explicit or even implicit that the Bank actually took exception to his activities or that he was warned by the Treasurer or management or was at all asked to desist from it. What he says in his deposition is that his activities were not liked by the Head Cashier who had become inimical to him actually on one occasion assaulted him. On the other hand this is not denied that some fault finding in his work was there and he was reported against by the Head Cashier. The Treasurer in his reply to the letter of the Bank which of course was sent much later somewhere in 1951 when the case had already been sent to the Tribunal for adjudication has stated that complaints from the Head Cashier were received about his mode of living and doubtful dealing with the constituents; and that enquiry was made from Lala Saligram Tandon, another proposed Head Cashier of Gazipur, who worked for some months at Kanpur during his relieving period as well as from Shri Brij Mohan Lal, Head Cashier, Mirzapur who had also complained against the employee about the change of a currency note in the payment made by the Bank to the constituent. It was further stated in this letter (Ex. 3) that the Treasurer had made personal enquiries through his clerks also and found the allegation made against Shri Tandon as true and it was revealed in this enquiry that he was used to indulge in gambling. The Treasurer further states that Shri Tandon was not a confirmed hand and on his

assurance that he would not dispute the termination of his service his security was returned to him on 5th January 1951.

The evidence referred to above was however questioned by the Union side on the plea that Ex. 3 was secured from the Treasurer Lala Monmohan Das on 14th September 1951 when the case had already been referred for adjudication and as such it is an evidence which has been created subsequently and was not available with the Bank at the time of the discharge and as such was not admissible in evidence. It was also argued by the Union representative that Shri Tandon was a Bank employee and the enquiry about the alleged misconduct if any should have been made by the Bank itself and not through the Treasurer. The argument was reinforced that even for the sake of argument if he was a probationer still sanction in his case was necessary because under the provision of Section 33 (as amended by the Act of 1950) it was obligatory upon the employer to obtain prior express permission in writing of the Tribunal in the case of workmen. It was emphasised that in the definition of workman as given in Section 2(s) even an apprentice was a workman. Stress was laid on the words 'including an apprentice' and it was urged that when an apprentice was included in the workman why a probationer should not be included in category of workman.

In regard to the position of the employee as to whether he was the nominee of the Treasurer or the Bank employee, it has been held once and again that the employees of the cash department are as good employees of the Bank as others and the point needs no further thought. On facts, I have already discussed above that the period of regular employment of Shri Tandon is left in doubt for want of production of the letter of appointment. But that doubt is removed as a copy of letter of appointment has been received by now in pursuance of the direction and it clinches the matter so far date of appointment is concerned. This is reproduced as under and it obviously fortifies the view adopted above and supports the averments made by Shri Monmohan in (Ex. 3) regarding the allegation that Shri Tandon joined in February 1950 and was not a confirmed hand.

ALLAHABAD BANK LIMITED

The Agent,

Calcutta, 2nd February, 1950.

ALLAHABAD.

No. E/2461.

Dear Sir,

Cash Staff.

L. Laxman Prasad Awasthi.

We have to advise, at the request of the Treasurer, the posting of the above cashier to Kanpur Branch. In replacement L. Purshottam Das, at present relieving at that office, is appointed to your establishment on the customary probationary terms. Please return the enclosed forms duly completed by the latter, the certificate of health being furnished by the Bank's doctor.

Advice may be sent us when these changes are effected.

Yours faithfully,

M. J. MACLAREN, P. General Manager.

The only other question is as to whether permission in case of probationer is necessary in this respect. Now the line of argument adopted by Shri Kakkar is indeed appreciable but the question is not of the category of workman as urged and the real question for determination precisely is as to whether the employer has no right to discharge a probationer during the period of his probation without obtaining the permission under Section 33 of the Act. I have already held in more than one cases in the awards of various States submitted under Notification No. LR.2(273), dated 21st February 1950 that the period of probation is a period during which the employer has to satisfy himself in regard to the service of the employee and it is his right to confirm him after six months period or not and that confirmation could not be made automatically on the expiry of six months. This time my attention was drawn to a decision of the All India Industrial Tribunal (Bank Disputes) in the case of Shri Om Prakash Kalra referred to above and it was contended by Shri Kakkar that their lordships of the All India Industrial Tribunal (Bank Disputes) in the case of a probationer as Shri Kalra was allowed reinstatement and that the case of Shri Tandon was of identical nature. I have perused that part of the award relating to Shri Kalra and noted that Shri Kalra joined Bank's service in June 1948 and owing to strike he was discharged in March 1949. It was observed in the award in his case that his confirmation was postponed owing to his Trade Union activities and it was a case of victimization. To my mind the facts are distinguishable because in that case it was found that it was a case of victimization, and confirmation was actually postponed when the case came up for confirmation after six months. The facts of this case stand on

different footing. Herein six months period is not completed. At any rate if facts be taken identical with the case of Shri Kalra as urged by Shri Kakkar, Union representative, with profound respect for the cited authority I would submit that it is my misfortune that I have not been able to persuade myself to agree with the view that in the case of a probationer when his case for confirmation was not postponed or had come up for confirmation at all before the management after six months, permission under Section 33 is necessary. I accordingly adhere to the view which I have given in other cases and see no good reason to depart from that, that the probationary period is a period during which the employer has a right to satisfy himself as to whether the employee is to be confirmed or not and sheer on the expiry of six months confirmation does not follow automatically as to treat the employee as a permanent one.

At any event in consideration of all facts and circumstances I am of the opinion that it is not a fit case for reinstatement and I hold accordingly. The next question is one of compensation. In this connection, it is significant to note that Shri Tandon worked for more than a year as relieving hand and worked as probationer also for about six months. In these circumstances he is entitled to some relief. He was not paid any salary for notice period as well and I think the merits of the case call for some compensation. I assess the amount of compensation to two months' salary with allowances permissible under rules which he was drawing at the time of discharge. The above direction shall be carried out within one month from the date when the award becomes effective.

NOW, THEREFORE, THIS TRIBUNAL MAKES ITS AWARD IN TERMS AFORESAID, THIS THE 6TH DAY OF OCTOBER 1951.

K. S. CAMPBELL-PURI, *Chairman*,
Central Government Industrial Tribunal, Calcutta.

[No. LR-90(74).]

N. C. KUPPUSWAMI, *Under Secy.*

